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BEFORE THE FEDERAL ELECTION COMMISSION

2012 JUN 22 PM 2:47

In the matter of

Apple Health Care, Inc.,

Respondent.

OFFICE OF GENERAL  
COUNSEL

MUR 6566

2012 JUN 22 AM 11:59

FEC MAIL CENTER

RESPONSE OF APPLE HEALTH CARE, INC. TO THE COMPLAINT IN MUR 6566

I. INTRODUCTION

This responds on behalf of our client, Apple Health Care, Inc. ("Respondent") to the notification from the Federal Election Commission ("Commission") that a complaint was filed against it in the above-captioned matter. The complaint is legally deficient under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations, as it simply does not allege that any violation occurred. Moreover, the complaint is not based on the personal knowledge of the complainant; it mischaracterizes the press reports on which it is based; and, even then, it is forced to concede that its mischaracterizations constitute merely "possible" or "potential" violations. But even taking the "possible" alleged facts as true, the complaint does not allege an actual violation of the Act or Commission regulations. For these reasons, as set forth more fully below, we respectfully request that the Commission find no reason to believe, dismiss the complaint, and close the file.

II. ANALYSIS

- A. The complaint does not allege a violation of the Act or Commission regulations; it merely describes routine and lawful activity.

The complainant in this matter is Mike Clark, a former opponent of Mrs. Lisa Wilson-Foley in the Republican congressional primary in Connecticut's Fifth Congressional District. To score cheap political points in the weeks immediately preceding the Connecticut Republican Congressional

Caucuses, held on May 18, 2012, Mr. Clark filed this complaint in a desperate effort to boost his failing campaign at the expense of Mrs. Wilson-Foley.

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The complaint contains speculation and innuendo, but it very clearly does not allege a violation of the Act or Commission regulations. The Complaint specifically acknowledges that John Rowland was involved in a "private business relationship" in a "consulting capacity" to Respondent. Compl. at 1. This, of course, is perfectly legal. It also acknowledges that Mr. Rowland was "volunteering" his time for the Wilson-Foley campaign. *Id.* Again, this describes entirely lawful activity. Indeed, the alleged volunteer activities were relatively de minimis and insignificant, including phone calls to delegates in advance of the Fifth Congressional District Convention, questioning one particular delegate's decision to endorse another candidate, and volunteering for one fundraising event benefiting the Wilson-Foley campaign. *Id.* at 1-2. Finally, the complaint states that the Wilson-Foley campaign did not list Mr. Rowland as a paid employee, consultant or vendor to the campaign. *Id.* at 2. Having conceded elsewhere in his complaint that Mr. Rowland was an unpaid volunteer, the Complainant apparently failed to recognize that the Wilson-Foley campaign therefore correctly did not list Mr. Rowland as a paid employee or consultant, because he was not paid. No matter how hard one looks, there simply is no violation alleged anywhere in Mr. Clark's complaint.

- B. The Act and Commission regulations and precedents specifically permit an individual to volunteer his or her time to a federal campaign without such activities constituting a contribution to the campaign from the individual's employer or clients.

The Act and Commission regulations provide that the term "contribution" does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee. 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74. The Commission has long recognized that an individual may volunteer his or her services to a federal candidate or political committee even though he or she may be employed or compensated by a business for services

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performed for the business. For example, the Commission has permitted a bank employee to volunteer his or her services as the treasurer of a campaign committee, including by providing such volunteer services during business hours on a limited basis. FEC AO 1980-51 (“Subject to the rules and practices of the bank, however, an employee, as an individual volunteer and not as a bank employee being compensated for such political activity, is permitted to make occasional, isolated, or incidental use of the facilities of the bank for the employee’s own individual volunteer activity in connection with the election.”). Moreover, the Commission has also approved the volunteer activities of partners in a law firm where the partners volunteered their time for both political and fundraising activities. *See, e.g.*, FEC AO 1980-107 (permitting a senior partner in a law firm to volunteer his time as a senior advisor to a presidential campaign); FEC AO 1979-58 (permitting a senior partner in a law firm to engage in volunteer fundraising and political activities without the law firm making a contribution to the campaign in connection with his continued compensation). In the instant matter, the complaint concedes that Mr. Rowland entered into a “private business relationship” in a “consulting capacity” with the Respondent. Compl. at 1. The complaint further concedes that Mr. Rowland volunteered in a limited amount of volunteer fundraising activities and made a limited number of phone calls to convention delegates — typical volunteer activities that the Commission has routinely approved in the past. *Id.* Accordingly, the complaint does not allege any facts that constitute a violation of the Act or Commission regulations and the Commission should find no reason to believe, dismiss the complaint and close the file.

C. The complaint alleges only lawful conduct, and thus provides no basis for a reason-to-believe finding under the Act and Commission regulations.

The Act and Commission regulations contain procedural safeguards that ensure complaints meet a minimum threshold of accountability, specificity and credibility before the Commission may vote to find reason to believe. Specifically, Commission regulations provide, *inter alia*, that the complaint must clearly recite facts describing an actual violation of a statute or regulation. 11 C.F.R.

§ 111.4(d)(3). Moreover, the Commission may not shift the burden of proof to the Respondent simply because a complaint has been filed, especially one that does not allege an actual violation of the Act and Commission regulations. *See* MUR 4850 (Deloitte & Touche, LLP, *et al.*), Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

Under the Commission’s regulations, a complaint must describe an actual violation of law by the Respondent and must do so by providing “facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. 111.4(d)(3). It is patently insufficient to merely speculate, as Complainant does here, that “*potential* violations of Federal law *may* have occurred.” *See* Compl. at 2 (emphasis added). The complaint extrapolates from lawful conduct reported in the Register Citizen newspaper a baseless inference that unreported corporate contributions may have occurred. Commission precedents are clear that mere speculation is insufficient to sustain a complaint. *See* MUR 6056 (Protect Colorado Jobs, Inc.) Statement of Reasons of Commissioners Matthew S. Peterson, Caroline C. Hunter, and Donald F. McGahn at 6 n.12 (“[P]urely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.”) (*quoting* MUR 5467 (Michael Moore), First General Counsel’s Report at 5); MUR 5641 (Robert Shrum, John Kerry for President, Inc.) Statement of Reasons of Chairman Michael E. Toner, Vice-Chairman Robert D. Lenhard, and Commissioners David M. Mason, Hans A. von Spakovsky, Steven T. Walther and Ellen L. Weintraub at 1 (“Respondents contend that the complaint is legally insufficient because Complainant’s allegations, even if true, are not FECA violations. . . . OGC correctly concludes that the complaint provides insufficient basis to proceed because nothing suggests a respondent violated FECA.”); MUR 5541 (November Fund) Statement of Reasons of Commissioners Matthew S. Peterson, Caroline C. Hunter, and Donald F. McGahn at 3 (“allegations

were at best speculative”); MUR 5215 (Ohio Right to Life) Statement of Reasons of Chairman David Mason, Vice-Chairman Karl Sandstrom, Commissioner Bradley Smith and Commissioner Danny McDonald (“Ohio Right to Life should not have been named as a respondent in this case because the facts alleged in the complaint, even if true, did not constitute a violation by ORTL of the Federal Election Campaign Act.”).

As detailed above, neither Mr. Rowland’s “private business relationship” with Respondent nor his separate de minimis “volunteering” activities for the Wilson-Foley campaign constitute unreported corporate contributions or any other violation of the Act or Commission regulations.<sup>1</sup> Taken separately or together, none of these allegations – even if true – constitute a violation of the Act or Commission regulations by Respondent.

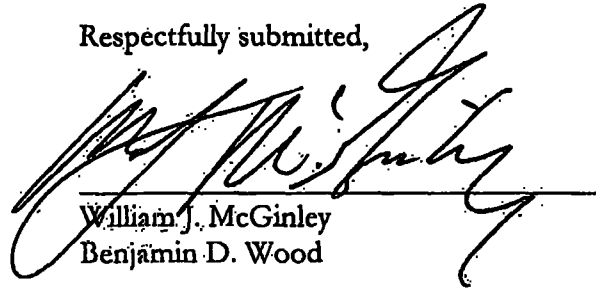
### III. CONCLUSION

The Complaint fails to satisfy the minimum requirements of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4 and thus is legally insufficient to support a reason-to-believe finding. The Act mandates — and Commission precedents hold — that the complaint must clearly recite facts describing an actual violation of a statute or regulation. The provision of volunteer services to a campaign committee, even if the individual volunteer is otherwise employed or compensated, does

<sup>1</sup> In an utterly irrelevant non sequitur, the complaint also alleges that Mr. Rowland offered campaign consulting services to a different campaign in a previous election cycle and asked to be paid by that candidate’s business. Complaint at 2. Even if it were true, this misplaced allegation has no relevance whatsoever to Respondent, Apple Health Care, or to Mr. Rowland’s lawful volunteering activity for the Wilson-Foley campaign in the 2012 election cycle.

not constitute a violation of the Act or Commission regulations. For the reasons set forth above, the Commission must follow the Act and adhere to its precedents by finding no reason to believe, taking no further action, and closing the file.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "W. J. McGinley", is written over a horizontal line.

William J. McGinley  
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